

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNIVERSITY OF WISCONSIN
HOSPITALS AND CLINICS AUTHORITY,

Plaintiff,

v.

Case No. 21-cv-741-wmc

XAVIER BECERRA, SECRETARY,
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendant.

JOINT MOTION FOR REMAND

Plaintiff, the University of Wisconsin Hospitals and Clinics Authority, and Defendant, Xavier Becerra, Secretary of the United States Department of Health and Human Services (HHS), respectfully submit this joint motion to remand the claims pending before this Court to the Secretary. In support of the instant motion, the parties state as follows:

1. This case is an action for judicial review, pursuant to 42 U.S.C. § 1395oo(f)(1), of a final decision of the Secretary of Health and Human Services denying the Plaintiff's challenges to the calculation of its Medicare disproportionate share hospital ("DSH") adjustments for the services it furnished to low-income patients during fiscal years 2007, 2008 and 2010.

2. Specifically, the Plaintiff challenged the DSH reimbursement calculations as understated due to the alleged failure of CMS and the MAC to accurately include all patient days for patients who were eligible for and enrolled in the SSI program but may not have received an SSI payment for the month in which they received services from the Provider (“SSI Eligible Days”) in the numerator of the Medicare Fraction of the DSH percentage.

3. Plaintiff and the Secretary agree that the Provider Reimbursement Review Board’s (the “PRRB” or the “Board”) decisions in PRRB Case Nos. 18-0336G and 17-1408G should be vacated as to Plaintiff’s claims only. Plaintiff’s claims for fiscal years 2007, 2008, and 2010 should be remanded to the Secretary, who will instruct the Board not to dismiss these claims on jurisdictional grounds and to either issue a decision pursuant to 42 C.F.R. § 405.1871 or grant expedited judicial review pursuant to 42 C.F.R. § 405.1842.

4. The parties further submit that the Board’s decision on remand is subject to review by the Secretary’s delegate, the Administrator of the Centers for Medicare & Medicaid Services (“CMS”), and the final agency decision on remand is subject to judicial review. *See* 42 U.S.C. § 1395oo(f)(1); 42 C.F.R. §§ 405.1875, 405.1877.

Accordingly, the parties respectfully request that this Court remand this matter to the Secretary for further proceedings before the Board and the Administrator of CMS.

5. Furthermore, the parties hereby move for dismissal of this action pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. This dismissal shall be without

prejudice to Plaintiff filing a subsequent lawsuit contesting any decision by the Board on the merits of Plaintiff's challenge to the DSH calculation.

6. A proposed remand order is attached.

Dated September 9, 2022.

Respectfully submitted,

s/Heather D. Mogden

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